

United States
Circuit Court of Appeals
For the Ninth Circuit. 19

UNITED STATES OF AMERICA,
Appellant,
vs.

WILLIAM FRANKLIN La SHAGWAY,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the District of Nevada.

FILED

NOV 13 1937

PAUL P. O'BRIEN

No. 8677

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

E. P. CARVILLE, Esq.,
United States Attorney,
Federal Building, Reno, Nevada.

THOMAS O. CRAVEN, Esq.,
Assistant United States Attorney,
Carson City, Nevada,
For the Appellant, United States
of America.

No Attorney of Record for Defendant. [1*]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

[Endorsed]: Filed April 29th, 1937.

In the District Court of the United States of
America, in and for the District of Nevada.

No. 9544.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM FRANKLIN La SHAGWAY,

Defendant.

INDICTMENT FOR VIOLATION.

Sec. 80, T. 18, U. S. C. A.

United States of America,
District of Nevada—ss.

Of the February, 1937, Term of the District Court
of the United States of America in and for the Dis-
trict of Nevada;

The Grand Jurors of the United States of
America, duly chosen, selected and sworn, within
and for the District of Nevada, in the name and by
the authority of the United States of America, upon
their oaths do find and present:

That on or about the 27th day of November, 1936,
at Reno, Washoe County, State and District of
Nevada, and within the jurisdiction of this court,
the above named defendant, William Franklin La-
Shagway, did then and there unlawfully, know-
ingly, and wilfully, make and present a claim upon
and against the Government of the United States,

for payment of a sum of money, to-wit: Two Hundred Thirty-four Dollars [2] Forty-four Cents (\$234.44), knowing such claim to be false, and fictitious, and fraudulent; that said false claim consisted of that certain writing, in affidavit form, subscribed and sworn to by defendant before a notary public at Reno, State and District of Nevada, on the 27th day of November, 1936, and stating that defendant had not received check number 104,893, dated April 10, 1931, payable to the order of defendant, in the sum of Two Hundred Thirty-four Dollars Forty-four Cents (\$234.44) drawn by L. S. McCracken, Special Disbursing Agent, Symbol number 99-151, and representing the amount of a loan on defendant's Adjusted Service Certificate, and making claim for said amount of Two Hundred Thirty-four Dollars Forty-four Cents (\$234.44), defendant then and there knowing that said claim was false and fraudulent; that said claim was made and presented by said defendant to General Accounting Office, of the United States Government, at Washington, D. C.; that at the time defendant made and presented said false claim, defendant then and there well knew that defendant had in truth and in fact received said check, payable to the order of defendant, in the sum of Two Hundred Thirty-four Dollars Forty-four Cents (\$234.44), had endorsed the same, and had received the proceeds of said check for defendant's use and benefit.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

E. P. CARVILLE,

United States Attorney.

By MILES N. PIKE,

Asst. U. S. Attorney.

A true bill:

P. L. NELSON,

Foreman. [3]

[Title of Court and Cause.]

DOCKET ENTRIES.

1. Indictment filed April 29, 1937.
2. Record on Concurring Grand Jurors filed April 29, 1937.
3. Bench Warrant issued April 29, 1937.
4. Bench Warrant returned with Marshal's Return—Unable to find the defendant within the District, filed April 29, 1937.
5. Arraigned and plea of guilty entered May 8, 1937.
6. Sentenced to One (1) Year in Federal Prison Camp No. 10, Tucson, Arizona, on May 8, 1937, and the Court reserves jurisdiction, during the Term, to consider any modification of the sentence and also to consider probation; defendant remanded.
7. Commitment issued, May 8, 1937.

8. Warrant of Removal out of the Southern Division, Northern District of California, filed May 10, 1937.

9. Commitment returned and filed May 26, 1937 with Marshal's Return as follows: Executed May 8, 1937 by delivering defendant to Sheriff, Washoe County, Nevada, and on May 20, 1937 by delivering defendant to Superintendent, Federal Prison Camp No. 10, Tucson, Arizona.

10. Order filed and entered modifying sentence and granting defendant probation for the remainder of term of sentence and for one year thereafter, filed June 7, 1937.

11. Notice of Appeal filed by U. S. Attorney, June 10, 1937.

12. Mandate of U. S. Circuit Court of Appeals dismissing appeal herein filed June 22, 1937.

13. Petition for Appeal filed September 1, 1937.

14. Assignment of Errors filed September 1, 1937.

15. Praecipe filed September 1, 1937.

16. Order granting Appeal filed September 2, 1937.

17. Issuing Citation on Appeal (Handed Marshal for service) on September 14, 1937. [4]

[Title of Court and Cause.]

MINUTES OF COURT, SATURDAY
MAY 8, 1937.

This defendant appeared this day in the custody of the Marshal, informed the Court he did not desire the services of an attorney at this time as he is fully advised as to the action he wishes to take, and thereupon was duly arraigned upon the indictment herein as required by law. He declared his true name to be William Franklin La Shagway, entered his plea of guilty as charged in the indictment, waived time and requested that sentence be passed upon him at this time. The case report was read. Mr. W. C. Fisk, Secret Service Agent, made a statement of the case. Thereupon the Court pronounced judgment as follows, addressing the defendant: "In consideration of the law and the premises, it is hereby ordered and adjudged that you be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a jail for the period of One (1) year from and after this date. The Court retains jurisdiction during the term to consider any modification of the sentence imposed upon you, and also to consider probation." The defendant is remanded to the custody of the Marshal for the execution of his sentence. [5]

[Title of Court and Cause.]

JUDGMENT.

This defendant appeared this day, pleaded guilty as charged in the indictment, waived time and requested that sentence be passed upon him at this time; thereupon the Court pronounced judgment as follows, addressing the defendant:

You, William Franklin La Shagway, have been indicted by the Grand Jury, impaneled in and by this Court for the crime of having violated Section 80, Title 18, U. S. C. A. by unlawfully, knowingly, and wilfully making and presenting a claim upon and against the Government of the United States, for payment of a sum of money, to-wit: Two Hundred Thirty-four Dollars and Forty-four Cents (\$234.44), knowing such claim to be false, and fictitious, and fraudulent; said crime having been committed on or about the 27th day of November, 1936, at Reno, Washoe County, State and District of Nevada, and within the jurisdiction of this Court. The defendant was then asked if he had any legal cause to show why the judgment of the Court should not now be pronounced against him. To which he replied that he had not.

In consideration of the law and the premises, it is hereby ordered and adjudged that you be committed to the custody of the Attorney General of the United States or his authorized representative for imprisonment in a jail for the period of one (1) year from and after this date. The Court retains jurisdiction during the term, to consider any modi-

fication of the sentence imposed upon you, and also to consider probation.

Dated and entered May 8, 1937.

Attest:

O. E. BENHAM,
Clerk.

By M. R. Grubic,
Deputy. [6]

[Endorsed]: Filed May 26, 1937.

[Title of Court and Cause.]

COMMITMENT.

The President of the United States of America:
To the Marshal of the United States for the District of Nevada and to the Superintendent of the Federal Prison Camp No. 10 at Tucson, Arizona, Greeting:

Whereas, at the May term of said Court, 1937, held at Reno, in said district and division, to-wit, on May 8th, 1937, William Franklin La Shagway was sentenced by said Court, upon his plea of guilty to be committed to the custody of the Attorney General of the United States or his authorized representative, for imprisonment in a (Jail) for and during the term and period of One (1) Year beginning on the date on which he is received at the (Jail) for service of said sentence; or if said prisoner shall be committed to a jail or other place of detention to await transportation to the place at which his sentence is to be served, said sentence

shall begin on the date on which he is received at such jail or other place of detention; for his violation of Section 80, T. 18, U. S. C. A. by unlawfully, knowingly and wilfully, made and present a claim upon and against the Government of the U. S., for payment of a sum of money, to-wit: Two Hundred Thirty-four Dollars Forty-four Cents (\$234.44) knowing such claim to be false, etc., said crime having been committed on or about the 27th day of November, 1936, at Reno, Nevada;

And Whereas, the Attorney General of the United States has designated the Federal Prison Camp No. 10 at Tucson, Arizona, as the place of confinement where the sentence of said William Franklin La-Shagway shall be served;

Now, this is to command you, the said Marshal, forthwith to take said William Franklin La Shagway and he safely transport to said Federal Camp No. 10 and he there deliver to said Superintendent of said Federal Prison Camp No. 10 with a copy of this writ; and you, the said Superintendent, to receive said William Franklin La Shagway and he keep and imprison in accordance with said sentence, or until he shall be otherwise discharged by due course of law.

Witness the Honorable Frank H. Norcross, Judge of said Court, and the seal thereof, affixed at Carson City, in said district, this 8th day of May, 1937.

[Seal]

O. E. BENHAM,

Clerk.

J. P. FODRIN,

Deputy Clerk. [7]

RETURN.

I have executed the within writ in the manner following, to-wit: On May 8th, 1937 I delivered said William Franklin La Shagway to the Sheriff of the Washoe County Jail temporarily pending transfer to the institution herein designated for the service of sentence, and on May 20th, 1937, I delivered said William Franklin La Shagway to the Superintendent of Federal Prison Camp No. 10 at Tucson, Arizona, together with a copy of this commitment.

LELAND S. BRAWNER,

United States Marshal.

By GEO. E. TURPIN,

Deputy.

Criminal Docket No. 9070.

[Endorsed]: Filed June 7th, 1937.

In the District Court of the United States of
America, in and for the District of Nevada.

No. 9544.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

WILLIAM FRANKLIN LaSHAGWAY,
Defendant.

ORDER MODIFYING SENTENCE AND
GRANTING PROBATION.

The above named Defendant on May 8, 1937, having entered a plea of guilty to the charge in the indictment returned against him and thereupon the Court imposed sentence that he be imprisoned for the period of one year from and after the date of sentence, subject to the reservation that the Court retains jurisdiction during the term to consider any modification of the sentence so imposed and also to consider probation, now upon good cause shown it is

Ordered that said defendant be, and he hereby is, granted release on probation for the remainder of the term of sentence so imposed from and after June 14, 1937, such probation, subject to the further order of the Court, to be for the remaining term of sentence and for one year thereafter, said Defendant on release to report forthwith to the Probation Officer of this District.

Dated this 7th day of June, 1937.

FRANK H. NORCROSS,
District Judge. [8]

[Endorsed]: Filed Sept. 1st, 1937.

[Title of Court and Cause.]

PETITION FOR APPEAL.

Now comes the Plaintiff, the United States of America, by E. P. Carville, United States Attorney for the District of Nevada, and prays that an appeal be granted to the United States Circuit Court of Appeals for the Ninth Circuit from an order herein entered granting defendant probation—such order being entered after the defendant had been sentenced, and after he had been committed for the execution of the sentence, and had served a part thereof; and in support of such appeal files herewith its assignment of errors.

E. P. CARVILLE,

United States Attorney.

By THOMAS O. CRAVEN,

Asst. U. S. Attorney. [9]

[Endorsed]: Filed Sept. 2nd, 1937.

[Title of Court and Cause.]

ORDER GRANTING APPEAL.

In consideration of the petition filed herein by the plaintiff, the United States of America, and good cause appearing therefor, it is by the Court this 2nd day of September, 1937,

Ordered that an appeal be allowed to the Circuit Court of Appeals for the Ninth Circuit.

FRANK H. NORCROSS,

District Judge. [10]

[Endorsed]: Filed Sept. 1st, 1937.

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes the Plaintiff, the United States of America, by E. P. Carville, United States Attorney for the District of Nevada, and in support of the petition for appeal herein filed this date assigns the following errors:

I.

That the Judge of said Court, and/or said Court, had no authority to make an order placing the defendant upon probation for the reason that defendant had commenced to serve his sentence under a judgment rendered herein on May 8, 1937, sentencing him to serve one year in jail.

II.

That the Judge of said Court, and/or said Court, exceeded its jurisdiction in making said order of probation for the same reason as set forth in the preceding paragraph.

III.

That the Judge of said Court, and/or said Court, lost jurisdiction to make said order of probation for the same reason as set forth in paragraph 1 hereof.

Respectfully submitted,

E. P. CARVILLE,

United States Attorney.

By THOMAS O. CRAVEN,

Assistant U. S. Attorney. [11]

[Endorsed]: Filed September 1st, 1937.

[Title of Court and Cause.]

PRAECIPE.

To Honorable O. E. Benham, Clerk of the Above
Entitled Court:

Please prepare and certify record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled action and include therein the following papers and documents:

1. Docket Entries.
2. Indictment.
3. Record of Arraignment.
4. Record of Plea to Indictment.
5. Record of Adjudication of Guilt.
6. Judgment.
7. Commitment.
8. Order of Probation.
9. Petition for Appeal.
10. Order Allowing Appeal.
11. Assignment of Errors.
12. Citation on Appeal.
13. And this Praecipe dated September, 1937.

E. P. CARVILLE,

United States Attorney for Nevada.

By THOMAS O. CRAVEN,

Asst. U. S. Attorney. [12]

[Title of Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT, TO TRANSCRIPT OF RECORD.

United States of America,
District of Nevada—ss.

I, O. E. Benham, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of The United States vs. William Franklin La Shagway, said case being No. 9544 on the criminal docket of said Court.

I further certify that the attached transcript, consisting of 16 typewritten pages numbered from 1 to 16, inclusive, contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein together with the endorsements of filing thereon, as set forth in the Praeceptum filed by the Appellant, which is made a part of the transcript attached hereto, as the same appears from the originals of record and on file in my office as such Clerk in the City of Carson, State and District aforesaid.

And I further certify that the original Citation issued in this case is hereto attached.

Witness my hand and the seal of said United States District Court this 7th day of October, A. D. 1937.

[Seal]

O. E. BENHAM,
Clerk, U. S. District Court. [13]

[Endorsed]: Filed Sept. 30th, 1937.

[Title of Court and Cause.]

CITATION ON APPEAL.

The President of the United States to William Franklin La Shagway, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City and County of San Francisco, for the District of the State of Nevada, and within said Ninth Circuit, within thirty (30) days from the date hereof, pursuant to an order of the District Court first above named, allowing an appeal to the plaintiff above named and filed in the office of the Clerk of said District Court in and for the District of Nevada in an action wherein the United States of America is plaintiff and appellant, and you, the above named defendant, are appellee, to show cause, if any there be, why the order granting you probation after you had been sentenced and commenced to serve the sentence so imposed, as in said [15] order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Frank H. Norcross, Judge of the District Court of the United States for the District of Nevada, this 14th day of September, 1937, in the year of the Independence of the United States, the one hundred and sixty-second.

FRANK H. NORCROSS,

District Judge.

Attest:

[Seal]

O. E. BENHAM,

Clerk, District Court of Nevada.

United States of America,
District of South Dakota.

I hereby certify and return that within Citation on Appeal came into my hands for service on the 18th day of September, 1937, and that after a due and diligent search, I am unable to find the within-named defendant, William Franklin La Shagway, within my District.

C. W. ROBERTSON,
United States Marshal.
By J. H. JOHNSON,
Deputy.

Expenses of Deputy...\$11.30

\$11.30

RETURN ON SERVICE OF WRIT.

United States of America,
Northern District of Calif.—ss.

I hereby certify and return that I served the annexed Citation on Appeal on the therein-named William Franklin La Shagway by handing to and leaving a true and correct copy thereof with William Franklin La Shagway personally at Oakland in said District on the 29th day of September, A. D. 1937.

GEORGE VICE,

U. S. Marshal.

By J. R. CUNNINGHAM,

Deputy.

Marshal's Fees

Travel\$2.80

Service 2.00

\$4.80 [14]

[Endorsed]: No. 8677. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. William Franklin La Shagway, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Nevada.

Filed October 8, 1937.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.